

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

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|-------------------------|---|---------------------------------|
| IN RE |) | |
| CAPITAL ONE TELEPHONE |) | Master Docket No. 1:12-cv-10064 |
| CONSUMER PROTECTION ACT |) | MDL No. 2416 |
| LITIGATION |) | |

| | | |
|------------------------------|---|------------------------|
| This document relates to: |) | |
| |) | |
| BRIDGETT AMADECK, et al., |) | Case No: 1:12-cv-10135 |
| |) | |
| v. |) | |
| |) | |
| CAPITAL ONE FINANCIAL |) | |
| CORPORATION, and CAPITAL ONE |) | |
| BANK (USA), N.A. |) | |

| | | |
|---------------------------------|---|------------------------|
| This document relates to: |) | |
| |) | |
| NICHOLAS MARTIN, et al., |) | Case No: 1:11-cv-05886 |
| |) | |
| v. |) | |
| |) | |
| LEADING EDGE RECOVERY |) | |
| SOLUTIONS, LLC, and CAPITAL ONE |) | |
| BANK (USA), N.A. |) | |

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|--------------------------------|---|------------------------|
| This document relates to: |) | |
| |) | |
| CHARLES C. PATTERSON, |) | Case No: 1:12-cv-01061 |
| |) | |
| v. |) | |
| |) | |
| CAPITAL MANAGEMENT |) | |
| SERVICES, L.P. and CAPITAL ONE |) | |
| BANK (USA), N.A. |) | |

NOTICE OF SUPPLEMENTAL AUTHORITY

On November 20, the United States District Court for the Eastern District of Wisconsin denied certification of a litigation class under the Telephone Consumer Protection Act. *See Balschmiter v. TD Auto Finance LLC*, No. 13-cv-1186-JPS, 2014 WL 6611008 (E.D. Wis. Nov. 20, 2014) (attached as Exhibit A). Capital One hereby submits the *Balschmiter* decision as

supplemental authority, because it supports Capital One's argument that the class settlement is fair, reasonable, and adequate in light of the severe risks that Plaintiffs face both on class certification and the merits. (*See* Dkt. 267 (Capital One Mem. in Supp. of Final Approval).) First, the decision highlights the individualized consent issues that would render Plaintiffs' proposed litigation class unmanageable. (*See* Ex. A, at 39-44.) Second, it rejects Plaintiffs' argument (*see, e.g.*, Dkt. 262, at 21) that the provision of a cell phone number to a creditor *after* the origination of a credit relationship can never suffice as TCPA prior express consent. (Ex. A, at 21.) Third, it supports Capital One's argument (Dkt. 267, at 13) that customers can consent to receive autodialed calls through agents, creating further individualized defenses that reduce liability and preclude class treatment. (Ex. A, at 26.) For all these reasons, Capital One submits this Notice of Supplemental Authority and respectfully asks that the Court approve the parties' settlement as "fair, reasonable, and adequate" under Rule 23.

Dated: December 8, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on December 8, 2014, a copy of the foregoing **NOTICE OF SUPPLEMENTAL AUTHORITY** was filed electronically. Notice of this filing will be sent to all counsel of record by operation of the Court's electronic filing system.

/s/ Aaron D. Van Oort

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